

CITIZENS' REVIEW BOARD ON POLICE PRACTICES

SUMMARY

The 2011/2012 San Diego County Grand Jury received a citizen complaint alleging that the Citizens' Review Board on Police Practices (CRB) was not operating in an independent, fair and impartial manner.

The Grand Jury's investigation revealed that the CRB has been allowing personnel from the San Diego Police Department Internal Affairs Division (IA) to attend the CRB's closed session meetings for several years. This could have an effect on the CRB's independent decisions.

Interviewees told the Grand Jury that they have heard IA personnel tell the CRB that they never want any dissenting votes going from the CRB to the Mayor or the Chief of Police.

CRB leadership fosters a lack of decorum among CRB members, which is in direct violation of CRB by-laws. This has created an atmosphere of fear and intimidation perpetuated by some CRB members. This contributes to a high turnover rate of prospective board members who are appointed to the Board as vacancies occur. CRB leadership is weak and lacks the will to control CRB meetings including the behavior of CRB members toward one another.

INTRODUCTION

The Grand Jury received a citizen complaint that the CRB was not operating in an independent, fair and impartial manner.

The Grand Jury wanted to know how the CRB operates, who makes what decisions, and whether it is operating in an independent, fair and impartial manner.

PROCEDURE

The Grand Jury studied the current operation of the CRB, its Policies and Procedures-Bylaws, Memoranda of Law from the City Attorneys' office, SDPD memos, Public Safety Officers Procedural Bill of Rights, pertinent City Charter sections, Internet web sites belonging to San Diego City Government, the San Diego City Attorney's Office, and the CRB. The Grand Jury interviewed:

- Current and past CRB members
- Past prospective members of the CRB
- Representatives of CRB leadership
- Representatives of the City Attorneys' office

DISCUSSION

The CRB was established in November 1988 when voters passed Proposition G. Its purpose is to review citizen's complaints against police officers. The CRB began its work July 1, 1989. The Mayor appoints 23 volunteer citizens to the CRB for one year terms beginning each July 1. The Mayor also appoints up to 23 citizens as non-voting "Prospective Board Members" who are trained for appointment to the CRB as vacancies occur throughout the year. The CRB makes a semi-annual report to the Mayor discussing its accomplishments, activities, and concerns.

Category I allegations include force, arrest, discrimination, slur, and criminal conduct. If alleged as part of a Category I complaint, the CRB also reviews allegations about procedure, courtesy, conduct and service. These are Category II complaints. When filed alone Category II complaints are evaluated solely by the SDPD and are not reviewed by the CRB. Internal Affairs refers Category II complaints to the Division Commander where the incident took place. The Division Commander is responsible for review, investigation, and action.

When IA receives a Category I complaint, they assign it to an IA sergeant for investigation. The investigation includes interviews with the complainant, civilian witnesses, witness officers, and the subject officer. This includes an examination of the physical evidence, if any. IA considers each allegation in the complaint separately. Once the investigation is complete, IA's disposition of each allegation is classified in one of the following ways:

- **SUSTAINED:** The SDPD member committed all or part of the alleged act of misconduct.
- **NOT SUSTAINED:** The investigation produced insufficient information to clearly prove or disprove the allegation.
- **EXONERATED:** The alleged act occurred but was justified, legal, and proper, or was within policy.
- **UNFOUNDED:** The alleged act did not occur.
- **OTHER FINDINGS:** The investigation revealed violation(s) of SDPD policies/procedures not alleged in the complaint.
- **COMPLAINANT NOT-COOPERATIVE (CNC):** The complainant either cannot be located to be interviewed, refuses to be interviewed, or fails to provide sufficient information. IA must try to locate the complainant. (Note: In some limited circumstances, even when the complainant is not cooperative and is not

interviewed, IA may determine that there is sufficient evidence to reach a decision.)

The SDPD Homicide Unit investigates officer- involved shootings and in-custody deaths. Once the homicide investigation is complete for officer-involved shooting and in-custody death cases, IA's case disposition will be classified as either within-policy or not within-policy.

After IA renders its findings on a complaint, a three-member CRB team is called in to review the case. The entire IA investigative file related to the complaint is made available to the CRB team. This includes originals of the complaint, video or audio tape recordings of interviews of witnesses and parties to the incident, and physical evidence. IA interviews are taped with the permission of the complainant and witnesses to facilitate CRB review.

The CRB team must meet in the IA offices to preserve the confidentiality mandated by the State of California. Even the notes made by the CRB team are kept with the file in the Internal Affairs office. At least two of the three review team members must review the complaint file before a recommendation is made to the CRB. The team then prepares recommendations to the entire CRB to either agree or disagree with IA's conclusions. At least two team members must concur in their recommendation or the case is referred to another team for review and recommendation.

For each allegation in a complaint, the team may recommend that the CRB:

- Agree with Internal Affairs findings,
- Disagree with Internal Affairs findings with comments,
- Request additional information from Internal Affairs in order to make a decision, or
- Refer to the CRB Policy Committee any specific policy or procedural issues arising from a case that do not directly relate to the allegations of that case.

The entire CRB considers the review team's recommendation in a closed session. It is important to note, however, that the CRB is not authorized to conduct independent investigations. Nor does it have direct access to the complainant, officers or witnesses, and bases its evaluations and decisions solely on the investigative work of the Internal Affairs Unit. The CRB may, however, request an additional investigation to be conducted by IA to resolve unanswered questions. Following the CRB vote on each case, the CRB Chair sends a letter to all complainants informing them of the CRB's review and findings regarding the allegations.

In those cases where the CRB disagrees with IA's findings on a complaint, and cannot resolve its differences with SDPD management, the CRB Chair advises the Mayor of the issue and the CRB's position. The CRB Chair also advises the mayor of any substantive comments that the CRB has made on individual cases, and may suggest policy changes

based on trends that have come to the CRB's attention. The final resolution of the disagreement is then made by the Mayor.¹

CRB members are volunteers who receive no compensation for their service. They devote many hours per month to the work of the CRB and to training. Applicants for the CRB are interviewed by a committee of CRB members. The committee can select people they want regardless of ethnic or economic diversity. Recommendations are then made to the Mayor who makes the appointments to the Prospective Board membership. Training starts immediately thereafter in preparation for becoming full board members when a vacancy occurs.²

CRB members are expected to maintain high standards of ethical conduct. The following are declared to be causes for removal from the CRB, though recommendations to the Mayor for removal may be based on causes other than those enumerated:

- Misuse of position as a Board member or police-issued identification,
- Violation of State laws of confidentiality,
- Conviction of a felony or crime of moral turpitude while serving as a Board member, or
- Any conduct unbecoming a Board member.

Board members are expected to treat fellow board members and SDPD officers with whom they interact in a respectful and professional manner.³

CRB rules and regulations state that members are to encourage dialogue with each other. This includes critical analysis of the case being reported while treating each other with respect, dignity, professionalism, and kindness. Board members have the right to ask questions and express opinions as long as both are done with respect.⁴ Every current and past Board member and every past prospective member interviewed told the Grand Jury that they had observed and experienced Board member misbehavior. These alleged actions became a matter of routine: intimidate, threaten, bully, yell, and curse one another in both open and closed sessions. All violated the Board's own bylaws. In both open and closed sessions interviewees observed Board members openly express their personal beliefs concerning what police officers should or should not do, and have not done. The interviewees all concluded their collective belief was that these are the main reasons for the high turnover rate of prospective members. The Grand Jury asked CRB leadership why this was allowed to happen. The Grand Jury received no definitive answer.

¹ Citizens' Review Board on Police Practices Fiscal year 2010 Annual Report

² CRB Policies and Procedures-Bylaws revised July, 2010 Article IV Sec. 2a

³ CRB Policies and Procedures-Bylaws revised July, 2010 Article V Sec. 5a

⁴ CRB Rules and Regulations Sec. 2.7 Entitled Board Decorum paragraph 1

The chart below represents the makeup and disposition of the Prospective Board Members who were selected to serve for the period July 2011 to June 2012.

Male	Disposition	Female	Disposition
African/American	Resigned	Hispanic	Resigned
Hispanic	Resigned	Hispanic	Resigned
White	Appointed to the board	White	Appointed to the board
White	Appointed to the board	White	Appointed to the board
White	Appointed to the board	White	Appointed then resigned
White	Appointed then resigned	White	Still a prospective member
White	Resigned		
White	Still a prospective member		
White	Still a prospective member		

Except for CRB leadership representatives, all interviewees told the Grand Jury that they believed that CRB leadership was weak and ineffectual. The Jury was told that a faction of Board members controlled the Board meetings; also, that an atmosphere of fear and intimidation existed, plus leadership was unresponsive.

It has become a customary and routine practice for the CRB to allow IA personnel to attend closed sessions of the Board. Leadership representatives of the Board told us that this practice was “inherited” by them and they didn’t know how it began. The Grand Jury found a City of San Diego memorandum dated March 3, 1995, that stated the following: “July 1993 The CRB recommended that IA investigators attend a CRB meeting to familiarize themselves with the Board and the review process. This was implemented.” By the use of the word “a”, it is clear that the Boards’ intention was that IA be allowed to attend one Board meeting for familiarization purposes only and not to continue in perpetuity.

There is a legal question as to whether the attendance of an IA representative at a closed session meeting is permissible. There have been numerous Attorney General opinions over the years concerning the question of non-group members attending closed sessions.

The Attorney General has stated that anyone who is not a “member” of the group meeting in closed session should not attend the closed session. In the case of the CRB, when questions arise in closed session that can only be answered by IA the closed session should be recessed. An open session can then resume for purposes of answering those questions. The group would then return to closed session.

Three member teams of the CRB are required to review cases that have been completed by IA in the IA offices only. Teams can review as a group or individually. It is during this review process when IA personnel attempt to find out if the reviewer will agree or dissent with the IA findings. Grand Jury interviewees told us that they had experienced times when, in the event of a possible dissent, IA personnel would offer help to better understand their conclusions. IA would argue, sometimes bully them into changing their minds, and sometimes lecture them, creating a feeling of intimidation. The Grand Jury was told by an interviewee that if a member persisted in dissent, he/she was branded as anti-police by other Board members.

The Grand Jury believes that the CRB was established to perform a valuable service to the Citizens of San Diego and to SDPD. If Board members demonstrate a lack of respect for each other in open meetings with members of the public in attendance, the Grand Jury questions how the public can expect the Board to be fair and impartial.

If IA personnel interfere with the three-member teams while they review IA reports, the Grand Jury again questions how those teams can make independent, fair and impartial evaluations.

FACTS AND FINDINGS

Fact: CRB membership interview and select candidates for prospective board members and then recommend them to the Mayor for appointment.

Finding 01: This process allows bias, prejudice, and other personal feelings of the interview committee members to influence their recommendations.

Fact: There is a lack of decorum among Board members in open sessions when members of the public are present.

Fact: The lack of decorum has created an atmosphere of fear and intimidation among some Board and prospective members.

Fact: Lack of decorum is in direct conflict with the Board’s own policies and procedures-bylaws.

Finding 02: The lack of decorum among Board members has contributed to a high turnover of prospective members and has affected the Board's ability to function properly.

Finding 03: CRB leadership is weak, ineffectual, and unresponsive.

Finding 04: A faction of Board members is allowed to control Board activity.

Finding 05: If CRB leadership were stronger and more willing to be involved, decorum and factions among Board members could be controlled.

Fact: The CRB allows IA personnel to attend all closed sessions.

Finding 06: IA personnel attendance in closed sessions inhibits the CRB from being independent, fair, and impartial.

Finding 07: Interference by IA personnel during the review process prohibits the three-member team from making independent, fair, and impartial reviews of IA reports.

RECOMMENDATIONS

The 2011/2012 San Diego County Grand Jury recommends that the Mayor of the City of San Diego:

- 12-29:** Establish an interview committee, independent from the CRB, for the selection of prospective CRB Board members.
- 12-30:** Set questions to be determined by the Mayor; which committee will then make recommendations to the Mayor.
- 12-31:** Select a three-member team, independent of the CRB, who will conduct an investigation and evaluate the current CRB Executive leadership to determine if replacement is needed.
- 12-32:** Immediately instruct the Chief of Police to ensure that IA personnel stop attending CRB closed sessions
- 12-33:** Instruct the Chief of Police to ensure that IA personnel stop interfering with the CRB teams during their file reviews.
- 12-34:** Reduce the number of consecutive years a Board member may serve from eight to four to encourage ethnic and economic diversity.

The 2011/2012 Grand Jury recommends that the San Diego City Attorney:

12-35: Conduct an investigation and evaluation of current Deputy City Attorney representatives assigned to the CRB to determine if replacement is needed.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
Mayor, City of San Diego	12-29 through 12-34	8/20/12
City Attorney, City of San Diego	12-35	8/20/12